

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1118 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

STATE OF GUJARAT

Versus

GOVINDBHAI VELJIBHAI MOCHI

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 21/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

State, being aggrieved by an order of acquittal in so far as original accused Nos.2 to 7 are concerned, has preferred this appeal. Original accused Nos.2 to 7 were tried by learned Addl. City Sessions Judge in

Sessions Case No.10 of 1994 for the offences punishable under Secs.498(A) and 306 of Indian Penal Code. Accused No.1 is convicted and is sentenced to undergo rigorous imprisonment for five years and is also sentenced to pay a fine of Rs.5,000/- (in default of payment of fine, one year rigorous imprisonment) for an offence punishable under Sec.306 of Indian Penal Code. He is also held guilty and convicted for an offence punishable under Sec.498(A) of Indian Penal Code and is ordered to undergo rigorous imprisonment for 1 1/2 years and to pay a fine of Rs.1,500/- (in default of fine, six months rigorous imprisonment).

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#. Ordinarily, once the appeal is admitted arising out of the judgment, against other accused, it can be said that the appeal should be admitted. However, in the instant case, in para 35, learned Judge has discussed the evidence with regard to accused Nos.2 to 7 in detail. FIR refers to allegations against the original accused No.1, but there is no reference to accused Nos.2 to 7. There is nothing to indicate that accused Nos.2 to 7 have tortured the deceased in any manner at any time. The complainant has also admitted in his complaint before the Police that he has made allegations against accused No.1 only. With regard to accused Nos.2 to 7, there is improvement at a later stage. Laxmiben has also not referred accused Nos.2 to 7. It is not the prosecution case that accused Nos.1 to 7 were residing in the same house. Father of the deceased has also not stated that all were residing together. Accused No.1 was residing at Dubai and after his arrival, incident in question has taken place. She was residing with her husband at Bhuj after his arrival. Learned Addl. Sessions Judge has observed in his evidence that it is clear that she was residing separately atleast not with accused Nos.2 to 7.

#. Learned Addl. Public Prosecutor, who is armed with the evidence could not point out any material from the evidence indicating how the original accused Nos.2 to 7 can be held guilty.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty

of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Looking to the above observation and the facts and circumstances of the case, the appeal stands dismissed.

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